

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DELIA M. HAYES,

Plaintiff,

v.

COSTCO WHOLESALE  
CORPORATION, et al.,

Defendants.

No. 1:20-cv-01233-NONE-EPG

ORDER DENYING MOTION TO FOR  
LEAVE TO AMEND WITHOUT PREJUDICE

(ECF No. 26)

On January 15, 2021, Plaintiff Delia M. Hayes filed a motion for leave to amend the amended complaint. (ECF No. 26). On January 19, 2021, Defendants Costco Wholesale Corporation, Paul Cano and Jim Harris, Jr., filed a response, indicating that they do not oppose Plaintiff's motion, so long as Plaintiff makes claims only under the Americans with Disabilities Act (ADA) and Unruh Act and files the amended complaint within 30 days. (ECF No. 27).

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave." Here, however, Defendants do not consent to Plaintiff's request. Instead, Defendants gave a conditional consent that Plaintiff can amend her complaint only as to the ADA and Unruh Act claims. Thus, Plaintiff may not automatically amend her complaint under Rule 15(a).

Plaintiff also has not submitted a proposed amended complaint. The Eastern District of California's local rules require that a party include such a proposed complaint in a motion for

1 leave to amend the complaint that requires leave of the court, as this one does:

2 If filing a document requires leave of court, such as an amended complaint after  
3 the time to amend as a matter of course has expired, counsel shall attach the  
4 document proposed to be filed as an exhibit to moving papers seeking such leave  
5 and lodge a proposed order as required by these Rules. If the Court grants the  
6 motion, counsel shall file and serve the document in accordance with these Rules  
7 and the Federal Rules of Civil and Criminal Procedure.

8 Local Rule 137(c).

9 The Court will therefore deny Plaintiff's motion, without prejudice. This order does not  
10 prohibit Plaintiff from filing another motion for leave to amend her complaint in accordance with  
11 the Local Rules.

12 In addition, this order does not prohibit Plaintiff and Defendant from filing a stipulation  
13 concerning the terms pursuant to which she may amend her complaint, for example agreeing that  
14 Plaintiff may file an amended complaint only to the ADA and Unruh Act claims.

15 The Court notes that the Court's findings and recommendations are currently pending,  
16 (ECF No. 25), and the deadline has not yet expired to file objections. Neither side has filed  
17 objections to the findings and recommendations, which are due January 26, 2021. The findings  
18 and recommendations recommended granting leave to amend only the ADA and Unruh Act  
19 claims and dismissing other claims with prejudice. To the extent that Plaintiff objects to the  
20 Findings and Recommendations on the basis that dismissal of all claims should be without  
21 prejudice and with leave to amend, Plaintiff should file objections explaining this, including what  
22 Plaintiff could assert in an amended complaint to cure the deficiencies in the current complaint.<sup>1</sup>

23 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for leave to amend (ECF  
24 No. 26) is DENIED, WITHOUT PREJUDICE.  
25 IT IS SO ORDERED.

26 Dated: January 19, 2021

27 /s/ Eric P. Guay  
28 UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> If Plaintiff needs additional time to file such objections, she should file a motion for extension of time.